student assignment order must be made by a three-judge panel.

To expedite the implementation of court-ordered remedies, the legislation directs the courts to review existing cases—most of which have been in effect for twenty years or more. In cases across the country there is simply no justification for continued court supervision. Integration of the public schools is an accepted public policy position, and in the vast majority of cases intentional segregation has been eliminated. Unfortunately, in some cases, court orders are perpetuated by those who use them as financial leverage with state appropriators. For instance, when a court in Kansas City ordered the construction of an Olympic size swimming pool and implement a fencing program as part of the athletic curriculum, the state anted up the money.

To put an end to such abuses, judges are to review cases after two years to determine whether school officials are in compliance. If it is determined that the district has not taken steps to remedy the violation, a judge may extend the order one year at a time. The legislation also establishes new procedures for the appointment and tenure of special masters.

Finally, the measure prohibits judges from raising taxes and allows any state or local official responsible for the operation or funding of the public school to challenge the imposition or continuation of court-ordered relief.

Mr. Speaker, I know there are only a few short days left in the 104th Congress. However, this is an issue I have studied and worked on for the past two years. And I think it is important to introduce it now so that a broader discussion of this issue may develop over the next several months so that the 105th Congress can promptly consider this legislation. Therefore I am proud that today I am able to introduce common-sense legislation providing relief for America's most precious asset—our children.

STAFFING FIRMS WORKER BENEFITS

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Saturday, September 28, 1996

Mr. CARDIN. Mr. Speaker, one of the most significant changes in our economy in recent years has been the growth of staffing firms. These firms employ individuals on a temporary or a long-term basis and assign them to client companies as needed.

The rapid expansion of these employment arrangements in our economy has give rise to a number of difficult questions in the area of employment taxes, as well as retirement, health, and other benefits. Our Nation's tax laws require employers to collect employment taxes, and offer tax-favored treatment for employer-provided fringe benefits.

Within our existing tax system, the ability to identify clearly who is the employer of a group of workers is crucial to the enforcement of the law. These issues also have important consequences for working Americans seeking the benefits of health insurance and pension coverage through their employment.

As more and more companies make use of staffing firms in meeting their needs for temporary and long-term workers, it will become necessary for the Congress to examine the application of our tax laws to these arrangements. Among the issues we must consider are the ability of staffing firms under existing law to act as employer for the purposes of collecting and paying employment taxes, as well as retirement and health benefits.

I have been working, along with my Ways and Means colleague Rep. PORTMAN, on a proposal that addresses many of these issues. We are putting the proposal forward at this time in the hope that it will draw comment from concerned parties. We hope to continue to work on this issue in the 105th Congress.

The draft proposal, along with a brief section by section summary, follows.

TECHNICAL SUMMARY OF STAFFING FIRM WORKER BENEFITS ACT OF 1996

Overview. In general, the bill amends the Internal Revenue Code to make it clear that a ''qualified staffing firm'' is the employer of the employees covered by staffing arrangements, both for purposes of employment tax liability and for purposes of employee benefit plan sponsorship. The bill also amends the leased employee and separate line of business provisions of Code section 414 to encourage retirement and fringe benefit coverage of employees of qualified staffing firms.

Introduction/Section 1. Staffing firms serve a variety of business needs, and their services are referred to in a variety of ways, *e.g.*, temporary help, long-term staffing, managed services, and professional employer arrangements. In the latter type of arrangement, primarily small to mid-size firms transfer their payroll and human resources functions to the staffing firm in order to concentrate on their core business. Staffing firms provide their services to customers on a contract or fee basis. The workers supplied by the staffing firm assumes the role of employer with respect to these workers in a number of ways, *e.g.*, paying the workers' wages, paying employment taxes with respect to these wages, retaining authority for hiring, reassigning, and dismissing the workers, etc. Because of the nature of their work, though, staffing firm employees normally are under the day-to-day supervision of the customer where they work.

The relationship that staffing firms typically establish with customers is built on the fundamental premise that the staffing firm, and not the customer, is responsible to staffing firm employees who work at the customer's work site for the payment of wages, and to the extent applicable, any specified employee benefits. While in many staffing arrangements there is no question that the staffing firm is the employer of its employees under the traditional common-law test, in other staffing arrangements this is less clear. For example, the Internal Revenue Service has established a market segment study of the ''employee leasing'' industry and is questioning whether, in certain types of arrangements involving staffing firms, the staffing firm is properly regarded as the ''employer'' for purposes of employment tax withholding and for purposes of maintaining employee benefit plans. An adverse holding on these issues could undermine the 401(k) and other benefits of staffing firm employees, as well as disrupt the business relationship between the staffing firm and the customer.

Section 2. This section of this bill is designed to codify the status of a ''qualified staffing firm'' as the entity with exclusive responsibility for federal employment taxes (income, FICA, and FUTA) with respect to workers covered by contracts between the firm and its customers. Implicit in this rule is that the customer will not have liability for such employment taxes if, for some reason, the qualified staffing firm does not pay.

This special rule is intended to apply only with respect to workers who are properly classified as employees, and not independent contractors, and to clarify that the qualified staffing firm, and not the customer, is these employees' employer. The rule applies whether or not the qualified staffing firm would otherwise be held to be the employer of these employees under the common-law test. No inference is intended as to the employer status of a qualified staffing firm under the common-law test.

Section 2(d) defines a ''qualified staffing firm'' for purposes of the special ''employer'' treatment accorded by the bill. This definition requires that the staffing firm must be liable for the worker's wages, the related employment taxes, and any agreed-upon employee benefits, without regard to the receipt or adequacy of the customer's payments. In addition, the staffing firm must have authority to hire, reassign, and dismiss the workers, and must maintain employee records relating to the workers, and must have responsibility for addressing the workers' complaints, claims, etc., relating to their employment. The fact that the customer may also have some involvement in these matters will not preclude a staffing firm from qualifying under this definition. Thus, the requirements of the definition will be met even though the staffing firm may take into account the customer's views in hiring or dismissing workers, the customer may maintain its own set of records with respect to the workers, or the customer may share responsibility for addressing the workers' complaints, claims, etc.

Section 3. This section amends an existing rule in section 7701(a)(20) in the Internal Revenue Code for full-time life insurance salesmen. That rule treats such sales representatives, who otherwise would be classified as independent contractors, as common-law employees for purposes of certain specified employee common-law employees for purposes of certain specified employee benefits. This enables them to enjoy the tax-favored treatment that the Code affords such benefits when furnished to employees.

The bill does not alter the rule for the life insurance salesmen, but adds a new subparagraph (B) that is designed to treat individuals who would be treated as employees of the qualified staffing firm under the employment tax provisions as employees of such firm for purposes of the employee benefit provisions that are listed in the text. The employee benefits provisions include those relating to group-term life insurance, accident and health plans, profit-sharing and retirement plans (including 401(k) and savings plans, but excluding defined benefit plans), cafeteria plans, dependent care programs, educational assistance programs, employer-provided fringe benefits, VEBAs, and employee achievement awards. The bill also makes it clear that these individuals will be treated as employees of the staffing firm for purposes of applying the provisions of section 414(n), and thus may be counted as ''leased employees'' of the customer if the other requirements of section 414(n) are met.

In addition, the bill clarifies that a worker will be treated as having separated from service if the worker ceases to be employed by the customer and becomes employed by the qualified staffing firm, or ceases to be employed by the qualified staffing firm and becomes employed by the customer. This will allow distribution of the worker's benefits under the 401(k) or retirement plan of the worker's prior employer. This provision is not intended to negate the application of the special leased employee service crediting rule under section 414(n)(4)(B).

Section 4. The bill contemplates that the general ''leased employee'' rule of section 414(n) will continue to apply to a customer. Under this rule, the customer must count a ''leased employee'' as its own employee for purposes of testing its plans under the IRS coverage and nondiscrimination rules.

Section 4(a) of the bill amends the leased employee provisions in section 414(n) so that they apply for purposes of section 401(k) and 401(m). This is intended to ensure that a customer will get credit, in accordance with section 414(n)(1)(B), for elective deferrals, matching contributions, and employee contributions, that are made on behalf of a leased employee.

Section 4(b) of the bill clarifies that a customer may choose to include a qualified staffing firm employee in the customer's plan as long as the employee is a leased employee of the customer, or would be a leased employee, but for the fact that the person has not yet worked the requisite time period specified in section 414(n)(2)(B) to be a leased employee. The bill language is designed to ensure that a qualified staffing firm worker who is covered by a customer's plan will be treated as an employee of the customer for purposes of applying the tax rules governing customer contributions to such plan, the tax-exempt status of any related trust under the plan, and distributions or payments under such plan. This provision applies for purposes of benefits that are tested by application of the leased employee rules, and also for purposes of stock option plans, section 403(b) annuities, and accident and health plans.

Section 4(c) of the bill sets forth provisions for the treatment of qualified staffing firm employees under the qualified staffing firm's plans, including streamlining the qualified staffing firm's access to the separate line of business rules of section 414(r). The separate line of business rules recognize that if an employer's employees are in multiple lines of businesses, each line of business may have its own competitive pressures, which may, in turn, affect the level of benefits the employer can provide to workers in those lines. Accordingly, the separate line of business rules generally allow an employer that has ''qualified separate lines of businesses'' to apply the IRS coverage and nondiscrimination rules separately to employees in each such lien of business. However, under the existing separate lien of business rules, a number of requirements must be met before an employer can be said to have ''qualified separate lines of business,'' including a requirement that there be at least 50 employees in the line of business, and that the line of business satisfy certain administrative guidelines.

Section 4(c) of the bill allows automatic separate lien of business treatment for those employees of a qualified staffing firm who are leased employees of a customer, or who would be leased employees of the customer but for the fact that they have not worked the requisite time period under section 414(n)(2)(B). The rationale for this simplified rule is the fact that section 414(n) treats these employees, once they qualify as leased employees, as employees of the customer for IRS coverage and nondiscrimination rules. Under the circumstances, it is inappropriate to require these workers to be counted twice under the coverage and nondiscrimination tests, once by the customer and once by the qualified staffing firm, without affording the qualified staffing firm access to the separate line of business rules. This provision affords comparable treatment in applying the nondiscrimination rules applicable to medical reimbursement plans under section 105(h) and cafeteria plans.

The bill also provides that if the separate lien of business segment of a qualified staffing firm's plan fails to meet the applicable IRS coverage and nondiscrimination rules, then the effect of disqualification will be confined to that segment of the plan. A special anti-abuse rule is included to make sure that employees who would be treated as highly compensated employees if they were employed by the customer are so treated under the qualified staffing firm's plan.

Section 5. This provision revises the current safe-harbor rule in section 414(n)(5) which allows a customer to disregard a leased employee for purposes of applying the coverage and nondiscrimination rules to its retirement or 401(k) plan if the leased employee is covered under a safe-harbor plan, and if leased employees in general comprise less than 20 percent of the customer's rank-and-file work force. The bill amends the requirements which relate to a safe-harbor plan to incorporate certain features that have been proposed as part of pension simplification in connection with 401(k) safe harbors. Under the new safe-harbor plan requirements, only employees working for the particular customer desiring relief from the leased employee rules would have to be covered by the plan, not all employees of the qualified staffing firm who perform services for customers. The bill also reduces the level of required contribution under a safe-harbor plan from 10 percent to 3 percent. If the safe-harbor plan is a profit-sharing plan, contributions may not be distributed to the employee until the occurrence of an event permitting distribution under the section 401(k) rules, *e.g.*, separation from service. As previously noted, an employee will be treated as having separated from service if the employee ceases to be employed by the qualified staffing firm and becomes employed by the customer.

Section 5(b) of the bill provides a safe-harbor rule for other employee benefit plans that would allow a customer to disregard leased employees for purposes of applying the coverage and nondiscrimination rules for employee benefit plans referred to in section 414(n)(3)(C) to the extent provided for in Treasury regulations.

Section 6. This section specifies the effective date of these provisions. Transition relief is afforded for existing plans.

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the ''Staffing Firm Worker Benefits Act of 1996''.

SEC. 2. CODIFICATION OF EMPLOYER STATUS OF QUALIFIED STAFFING FIRM FOR EMPLOYMENT TAX PURPOSES.

(a) INCOME TAX WITHHOLDING.—Section 3401(d) of the Internal Revenue Code is amended—

(1) in paragraph (1), by striking ''and'' at the end;

(2) in paragraph (2), by striking the period and inserting '', and''; and

(3) by adding at the end the following:

''(3) in the case of a qualified staffing firm, described in section 7701(a)(47), paying wages to an individual performing services for a customer of such qualified staffing firm, the term 'employer' means such qualified staffing firm.''

(b) FICA TAX.—Section 3121 of the Internal Revenue Code is amended by adding at the end the following:

''(z) APPLICATION TO QUALIFIED STAFFING FIRMS.—In the case of a qualified staffing firm, described in section 7701(a)(47), paying wages to an individual performing services for a customer of such qualified staffing firm, the term 'employer' means such qualified staffing firm.''.

(c) FUTA TAX.—Subsection (a) of section 3306 of the Internal Revenue Code is amended by adding at the end the following:

''In the case of a qualified staffing firm, described in section 7701(a)(47), paying wages to an individual performing services for a customer of such qualified staffing firm, the term ''employer'' means such qualified staffing firm.''.

(d) DEFINITION.—Subsection (a) of section 7701 of the Internal Revenue Code is amended by adding at the end the following paragraph—

''(47) QUALIFIED STAFFING FIRM.—The term 'qualified staffing firm' means any person that is engaged in providing temporary or long-term staffing services to a customer pursuant to a service contract, and that with respect to workers performing services for the customer who are covered by the contract—

''(A) Has responsibility for payment of wages to the workers, without regard to the receipt or adequacy of payment from the customer for such services,

''(B) Has responsibility for reporting, withholding, and paying any applicable taxes under Chapters 21, 23, and 24, with respect to the workers' wages, without regard to the receipt or adequacy of payment from the customer for such services,

''(C) Has responsibility for any worker benefits that may be required by the service contract, without regard to the receipt or adequacy of payment from the customer for such services,

''(D) Has authority to hire, reassign, and dismiss the workers and has the contractual right to exercise this authority independent of the customer,

''(E) Maintains employee records relating to the workers, and

''(F) Has responsibility for addressing the workers' complaints, claims, filings, or requests relating to their employment, except as otherwise provided by existing collective bargaining agreements, if any, notwithstanding that some or all of the actions described in this subparagraph may be shared by the customer.''.

SEC. 3. CODIFICATION OF EMPLOYER STATUS OF QUALIFIED STAFFING FIRM FOR PURPOSES OF PROVIDING EMPLOYEE BENEFITS.

Paragraph (20) of section 7701(a) of the Internal Revenue Code is amended—

(a) by redesignating the text of such paragraph as subparagraph (A);

(b) by adding the heading ''(A) FULL-TIME LIFE INSURANCE SALESMAN.—'' at the start of new subparagraph (A); and

(c) by adding at the end of paragraph (20) the following:

''(B) INDIVIDUAL COVERED BY QUALIFIED STAFFING FIRM CONTRACT.—For the purpose of applying the provisions of section 79 with respect to group-term life insurance purchased for employees, for the purpose of applying the provisions of sections 104, 105, and 106 with respect to accident and health insurance or accident and health plans, for the purpose of applying the provisions of section 101(b) with respect to employees' death benefits, for the purpose of applying the provisions of this title with respect to contributions to or under a trust which is part of a plan described in section 401(a) (other than a defined benefit plan), or to or under a plan described in section 403(a) (other than a defined benefit plan), including for this purpose elective contributions under section 401(k) and employee contributions and matching contributions under section 401(m), with respect to the tax-exempt status of a trust forming a part of such plan, and with respect to distributions under such a plan, or by a trust forming part of such a plan, for the purpose of applying section 125 with respect to cafeteria plans, for the purpose of applying section 127 with respect to educational assistance programs, for the purpose of applying section 129 with respect to dependent

care assistance programs, for the purpose of applying the provisions of section 414(n), and for the purpose of applying the provisions listed in section 414(n)(3), with respect to such other benefits, plans, or programs as are described in section 414(n)(3), the term 'employee' shall include, with respect to a qualified staffing firm, any individual whose employer is considered to be the qualified staffing firm for the purpose of Chapter 21, 23, and 24. For these purposes, a change in the employment relationship between an individual and a qualified staffing firm or between the individual and a customer or former customer of the qualified staffing firm, as the case may be, whereby the individual becomes or ceases to be an employee of the qualified staffing firm under this subparagraph, shall be treated as the termination of employment and separation from service by the individual from the employment or service of the qualified staffing firm's customer or the qualified staffing firm, as the case may be.''.

SEC. 4. TREATMENT OF LEASED EMPLOYEES IN EMPLOYEE BENEFIT PLANS.

(a) APPLICATION OF REQUIREMENTS CONCERNING CASH OR DEFERRED ARRANGEMENTS, MATCHING CONTRIBUTIONS, AND EMPLOYEE CONTRIBUTIONS TO LEASED EMPLOYEES.—Section 414(n)(3)(B) is amended by inserting ''401(k), 401(m)'' before ''408(k)''.

(b) PERMITTED COVERAGE OF LEASED EMPLOYEES BY RECIPIENT PLAN.—Paragraph (6) of section 414(n) of the Internal Revenue Code is renumbered as paragraph (8) and a new paragraph (6) is inserted to read as follows:

''(6) RECIPIENT'S PLAN.—

''(A) IN GENERAL.—A recipient may treat a leased employee who is an employee of a qualified staffing firm within the meaning of section 7701(a)(47) as its employee for purposes of providing such individual with employee benefits that are subject to the requirements listed in paragraph (3) or that are described in sections 104, 105, 403(b), 422, and 423. For purposes of the preceding sentence, a 'leased employee' includes an individual who would be a leased employee but for the requirements of paragraph (2)(B).

''(B) TREATMENT OF COVERED INDIVIDUALS.—An individual who receives employee benefits pursuant to subparagraph (A) shall be treated as an employee of the recipient for purposes of the provisions of this title that relate to the recipient's contributions or payments with respect to such benefits, the taxation of a trust, if any, providing such benefits, and the taxation of such benefits to the individual.''.

(v) SPECIAL RULES FOR LEASING ORGANIZATION'S PLAN.—Section 414(n) is amended by inserting the following as paragraph (7):

''(7) LEASING ORGANIZATION'S PLAN.—

''(A) ELECTIVE DISAGGREGATION.—

''(i) GENERAL RULE.—A leasing organization that is a qualified staffing firm may elect to be treated as operating a separate line of business for purposes of section 414(r), without regard to the requirements of subparagraph (A) and (C) of section 414(r)(2), (I) with respect to those employees who perform services for a recipient and related persons, and who would be treated as leased employees of the recipient by for the requirements of paragraph (2)(B), and (II) with respect to those employees who do not meet the requirements of clause (I) and who perform substantially all their services for the leasing organization. In the event the leasing organization elects under this paragraph (7)(A) to be treated as operating separate lines of business, sections 105(h)(3) and (4), 125(c), and 410(b)(5)(B) shall be applied to the relevant plan of the leasing organization by treating the portion of the plan covering employees described in clause (I) as being maintained by the recipient with respect to which the separate line of business relates, and by treating such individuals as employed by the recipient.

''(ii) EFFECT OF DISQUALIFICATION.—If the plan of a leasing organization electing under this paragraph (7)(A) fails to satisfy the requirements of section 410(b) or section 401(a)(4), with respect to a separate line of business, only that portion of the plan covering the employees in such line of business shall be disqualified.

''(iii) TREATMENT OF RELATED PERSONS.—For purposes of this subparagraph (A), the term ''recipient'' shall not include any person that is a related person with respect to the leasing organization.

''(B) HIGHLY COMPENSATED EMPLOYEES.—Whether or not the leasing organization makes an election under subparagraph (A), section 414(q) shall be applied to employees of a leasing organization that is a qualified staffing firm by treating the employees who perform services for a recipient or related persons and who would be leased employees of the recipient but for the requirements of paragraph (2)(B) as employed by, and receiving compensation from, the recipient or the related person for purposes of determining whether the employees are highly compensated employees of the leasing organization.''.

SEC. 5. REVISIONS TO SAFE HARBOR PROVISION.

(A) REVISIONS TO SAFE HARBOR PLAN REQUIREMENTS.—Subparagraph (B) of section 414(n)(5) of the Internal Revenue Code is amended to read as follows:

''(B) PLAN REQUIREMENTS.—A plan meets the requirements of this subparagraph if—

''(i) such plan is a money purchase pension plan or a profit-sharing plan, with a nonintegrated employer contribution rate for each participant which is at least 3 percent of that portion of the participant's compensation attributable to services performed for the recipient, and which is not dependent on the current or accumulated profits of the leasing organization or on whether the participant makes an elective contribution or employee contribution to such plan,

''(ii) such plan provides for full and immediate vesting,

''(iii) if the plan is a profit-sharing plan, such plan meets the distribution requirements of section 401(k)(2)(B) with respect to all employer contributions, and

''(iv) each employee of the leasing organization who performs services for the recipient immediately participates in such plan.''.

(b) EXTENSION OF SAFE HARBOR RULE TO ADDITIONAL EMPLOYEE BENEFITS.—Paragraph (5) of Section 414(n) of the Internal Revenue Code is amended by adding at the end the following:

''(D) SPECIAL RULE FOR ADDITIONAL EMPLOYEE BENEFITS.—To the extent provided for in regulations issued by the Secretary, in the case of a requirement described in subparagraph (C) of paragraph (3), this subsection shall not apply to any leased employee with respect to service performed for a recipient if—

''(i) such employee is covered by a plan or an arrangement that is maintained by the leasing organization and that meets such requirements as the Secretary shall prescribe in regulations, and

''(ii) leased employees (determined without regard to this paragraph) do not constitute more than 20 percent of the recipient's nonhighly compensated work force.''.

SEC. 6. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of the enactment of this Act. In the case of a plan that covers employees who are providing services for a customer pursuant to a contract between a qualified staffing firm and the customer, and that was adopted and in effect before the date of enactment of this Act, such amendments shall not take effect until the first day of the first plan year that begins after the date of enactment of this Act, and the plan shall not be required to be amended to reflect this Act until the end of such plan year.

TRIBUTE TO HUNTINGTON COLLEGE

HON. MARK E. SOUDER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Saturday, September 28, 1996

Mr. SOUDER. Mr. Speaker, in the context of a Congress and a society searching for the truth and meaning, integrity and consistency, it is a privilege for me to offer congratulations to an institution in Indiana's Fourth Congressional District that is dedicated to that and much more. September 20, 1996, marked the beginning of a year-long centennial celebration at Huntington College in Huntington, IN. This small, Christian liberal college is committed to one purpose, to equip men and women to make a Christian impact upon our world.

Founded in 1879 by the Church of the United Brethren in Christ, the college worldview was central to the curriculum and its people. The motto on the college's marquee is ''* * * Ye shall know the truth and the truth shall make you free * * *'' The wisdom of the Biblical passage is also at the heart of our Nation.

Many distinguished people have been associated with Huntington College during its 100-year history. I hope the people who should have been mentioned here, and were not, will forgive me. There are many faculty, staff, administrators, students, alumni, and friends who have helped the college through good times and bad. But I would like to mention just a couple of people with whom you might be familiar.

Former Congressman J. Edward Roush is an alumnus member of the board of trustees. Former Vice President Dan Quayle is a former adjunct faculty member. Dr. Eugene Habecker, president of the American Bible Society, is a former president of Huntington College.

The list could go on, but the last two people I want to mention in association with Huntington College come from humble beginnings as did Huntington College. Orville Merillat, a humble, God-fearing man, used his carpentry skills to begin what has been called America's premier cabinet company, Merillat Industries. His generosity has helped make Huntington College the dynamic institution it is today and his contributions to Christian endeavors around the world has been tremendous.

Finally there is ''baby Hope,'' Guerline Espoire Cloutier, a young child discovered in Haiti by Huntington College students working on a missions trip during January 1996. She was afflicted by hydrocephalus. One of the coordinators of the trip, a parent of an HC student, and a family practice physician, offered to help. That child now has a second chance to live. Her example is so significant because Huntington College exists because the example of another baby born into jumble circumstances central to the Huntington College ideal, Jesus Christ.